CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1458

Citations Affected: IC 2-5-26-15; IC 12-7-2-1.5; IC 12-10-15; IC 12-15; IC 12-21-2-5; IC 25-22.5-5-4.5.

Synopsis: Human services. Conference committee report for EHB 1458. Extends the select joint commission on Medicaid oversight. Provides for a penalty for housing with services establishments that do not comply with the disclosure requirements and requires the director of the division of disabilities, aging, and rehabilitative services to adopt specified rules. Adds a cross-reference to current law regarding access to certain mental health drugs. Amends the developmental disability Medicaid waiver application process. Requires the office of Medicaid policy and planning (OMPP) to determine Medicaid waiver eligibility for the developmentally disabled. Establishes a procedure under which restrictions may be placed on mental health drugs under certain circumstances. Specifies authority to determine initial placement designations in mental health facilities. Permits a person who has obtained a license to practice medicine outside the United States or Canada to obtain a temporary fellowship permit under certain circumstances until July 1, 2008. Allows OMPP to limit access to prescription drugs under the Hoosier Rx program in certain circumstances. **(This conference committee report adds language from the following bills: (1) HB 1713. (2) HB 1565. (3) SB 57. (4) SB 343. Specifically, the report: (1) amends the application process for an individual who has a developmental disability to receive services under a Medicaid waiver; (2) requires the office of Medicaid policy and planning (OMPP) to make the final determination of eligibility for services under a Medicaid waiver for an individual who has a developmental disability; (3) specifies authority to determine initial placement designations in mental health facilities; (4) provides for a penalty for housing with services establishments that do not comply with the disclosure requirements and requires the director of the division of disabilities, aging, and rehabilitative services to adopt specified rules; (5) amends the application process for an individual who has a developmental disability to receive services under a Medicaid waiver; and (6) permits a person who has obtained a license to practice medicine outside the United States or Canada to obtain a temporary fellowship permit under certain circumstances until July 1, 2008.)**

Effective: Upon passage; ; July 1, 2003.

Adopted	Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1458 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 2-5-26-15, AS ADDED BY P.L.256-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. This chapter expires December 31, ~~2003.~~ **2008.**

SECTION 2. IC 12-7-2-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1.5. "Administrator", for purposes of:

(1) IC 12-10-15, has the meaning set forth in IC 12-10-15-1.5; and

(2) IC 12-24-17, has the meaning set forth in IC 12-24-17-1.

SECTION 3. IC 12-10-15-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. As used in this chapter, "administrator" means a natural person who administers, manages, supervises, or is in general administrative charge of a housing with services**

establishment.

SECTION 4. IC 12-10-15-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. **(a)** The director shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

(b) The director shall adopt rules concerning the following:

(1) Procedures for the posting of notices at housing with services establishments, area agencies on aging, and centers for independent living (as defined by IC 12-12-8-1) that advise residents of their rights under this chapter.

(2) Procedures for residents and their representatives to file complaints with the director concerning violations of this chapter.

SECTION 5. IC 12-10-15-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 15. (a) The director shall enforce this chapter.**

(b) The director may impose a penalty of not less than one hundred dollars ($100) but not more than one thousand dollars ($1,000) for each day of violation of this chapter. However, the total penalty for each violation may not exceed ten thousand dollars ($10,000).

(c) A person aggrieved by a penalty imposed under this section may request a review under IC 4-21.5-3-7. If a request for a hearing is not filed within fifteen (15) days after the penalty is imposed, the determination of the director and the penalty is final.

(d) If the director determines that a housing with services establishment has had substantial and repeated violations of this chapter, the director may prohibit a housing with services establishment from using the term "assisted living" to describe the housing with services establishment's services and operations to the public.

(e) If the director determines that an operator or administrator of a housing with services establishment has intentionally violated this chapter or has made fraudulent and material misrepresentations to a resident, the director may request the attorney general to investigate and take appropriate action against the operator or administrator.

(f) Penalties collected under this section shall be deposited in the state general fund.

SECTION 6. IC 12-15-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) An application or a request for Medicaid for an individual must be made in the manner required by the office:

(1) at enrollment centers specified by the office; **or**

(2) through the United States mail, as described in subsection (h), if the individual has a developmental disability.

(b) Enrollment centers:

(1) shall be located at each county office; and

(2) may be located at other locations including the following:

(A) A hospital licensed under IC 16-21.

(B) The office of a provider who is eligible to receive payments under this article.

(C) A public or private elementary or secondary school.

(D) A day care center licensed under IC 12-17.2.

(E) The county health department.

(F) A federally qualified health center (as defined in 42 U.S.C. 1396d(l)(2)(B)).

(G) A rural health clinic (as defined in 42 U.S.C. 1396d(l)(1)).

(c) An entity described in subsection (b) other than the county office must enter into an agreement with the office for authorization to serve as an enrollment center where individuals may apply for Medicaid.

(d) One (1) or more authorized workers at each enrollment center may:

(1) accept applications for Medicaid; ~~and~~

(2) conduct interviews with applicants; **and**

(3) accept applications for services under a Medicaid waiver by an individual who has a developmental disability;

during hours and days of the week agreed upon by the office and the enrollment center.

(e) The office shall provide each enrollment center with the materials and training needed by the enrollment center to comply with this section.

(f) An enrollment center shall provide:

(1) each application taken by the enrollment center; and

(2) any accompanying materials;

to the county office located in the same county as the enrollment center at least one (1) time each week by any reasonable means. **Except as provided in subsection (g),** the county office staff shall make the final determination of an applicant's eligibility for Medicaid.

(g) The office shall make the final determination of eligibility of an individual who has a developmental disability to receive services under a Medicaid waiver.

(h) An individual who has a developmental disability may submit to the office through the United States mail an application to receive services under a Medicaid waiver.

(i) The office shall make available:

(1) on the Internet;

(2) at an enrollment center; and

(3) through the United States mail;

an application form for an individual who has a developmental disability to receive services under a Medicaid waiver.

SECTION 7. IC 12-15-35-28, AS AMENDED BY P.L.107-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. (a) The board has the following duties:

(1) The adoption of rules to carry out this chapter, in accordance with the provisions of IC 4-22-2 and subject to any office approval that is required by the federal Omnibus Budget Reconciliation Act of 1990 under Public Law 101-508 and its implementing regulations.

(2) The implementation of a Medicaid retrospective and prospective DUR program as outlined in this chapter, including the approval of software programs to be used by the pharmacist for prospective DUR and recommendations concerning the provisions

of the contractual agreement between the state and any other entity that will be processing and reviewing Medicaid drug claims and profiles for the DUR program under this chapter.

(3) The development and application of the predetermined criteria and standards for appropriate prescribing to be used in retrospective and prospective DUR to ensure that such criteria and standards for appropriate prescribing are based on the compendia and developed with professional input with provisions for timely revisions and assessments as necessary.

(4) The development, selection, application, and assessment of interventions for physicians, pharmacists, and patients that are educational and not punitive in nature.

(5) The publication of an annual report that must be subject to public comment before issuance to the federal Department of Health and Human Services and to the Indiana legislative council by December 1 of each year.

(6) The development of a working agreement for the board to clarify the areas of responsibility with related boards or agencies, including the following:

(A) The Indiana board of pharmacy.

(B) The medical licensing board of Indiana.

(C) The SURS staff.

(7) The establishment of a grievance and appeals process for physicians or pharmacists under this chapter.

(8) The publication and dissemination of educational information to physicians and pharmacists regarding the board and the DUR program, including information on the following:

(A) Identifying and reducing the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(B) Potential or actual severe or adverse reactions to drugs.

(C) Therapeutic appropriateness.

(D) Overutilization or underutilization.

(E) Appropriate use of generic drugs.

(F) Therapeutic duplication.

(G) Drug-disease contraindications.

(H) Drug-drug interactions.

(I) Incorrect drug dosage and duration of drug treatment.

(J) Drug allergy interactions.

(K) Clinical abuse and misuse.

(9) The adoption and implementation of procedures designed to ensure the confidentiality of any information collected, stored, retrieved, assessed, or analyzed by the board, staff to the board, or contractors to the DUR program that identifies individual physicians, pharmacists, or recipients.

(10) The implementation of additional drug utilization review with respect to drugs dispensed to residents of nursing facilities shall not be required if the nursing facility is in compliance with the drug regimen procedures under 410 IAC 16.2-3-8 and 42 CFR 483.60.

(11) The research, development, and approval of a preferred drug

list for:

(A) Medicaid's fee for service program;

(B) Medicaid's primary care case management program; and

(C) the primary care case management component of the children's health insurance program under IC 12-17.6;

in consultation with the therapeutics committee.

(12) The approval of the review and maintenance of the preferred drug list at least two (2) times per year.

(13) The preparation and submission of a report concerning the preferred drug list at least two (2) times per year to the select joint commission on Medicaid oversight established by IC 2-5-26-3.

(14) The collection of data reflecting prescribing patterns related to treatment of children diagnosed with attention deficit disorder or attention deficit hyperactivity disorder.

(b) The board shall use the clinical expertise of the therapeutics committee in developing a preferred drug list. The board shall also consider expert testimony in the development of a preferred drug list.

(c) In researching and developing a preferred drug list under subsection (a)(11), the board shall do the following:

(1) Use literature abstracting technology.

(2) Use commonly accepted guidance principles of disease management.

(3) Develop therapeutic classifications for the preferred drug list.

(4) Give primary consideration to the clinical efficacy or appropriateness of a particular drug in treating a specific medical condition.

(5) Include in any cost effectiveness considerations the cost implications of other components of the state's Medicaid program and other state funded programs.

(d) Prior authorization is required for coverage under a program described in subsection (a)(11) of a drug that is not included on the preferred drug list.

(e) The board shall determine whether to include a single source covered outpatient drug that is newly approved by the federal Food and Drug Administration on the preferred drug list not later than sixty (60) days after the date **on which the manufacturer notifies the board in writing** of the drug's approval. However, if the board determines that there is inadequate information about the drug available to the board to make a determination, the board may have an additional sixty (60) days to make a determination from the date that the board receives adequate information to perform the board's review. Prior authorization may not be automatically required for a single source drug that is newly approved by the federal Food and Drug Administration, and that is:

(1) in a therapeutic classification:

(A) that has not been reviewed by the board; and

(B) for which prior authorization is not required; or

(2) the sole drug in a new therapeutic classification that has not been reviewed by the board.

(f) The board may not exclude a drug from the preferred drug list based solely on price.

(g) The following requirements apply to a preferred drug list

developed under subsection (a)(11):

(1) **Except as provided by IC 12-15-35.5-3(b) and IC 12-15-35.5-3(c),** the office or the board may require prior authorization for a drug that is included on the preferred drug list under the following circumstances:

(A) To override a prospective drug utilization review alert.

(B) To permit reimbursement for a medically necessary brand name drug that is subject to generic substitution under IC 16-42-22-10.

(C) To prevent fraud, abuse, waste, overutilization, or inappropriate utilization.

(D) To permit implementation of a disease management program.

(E) To implement other initiatives permitted by state or federal law.

(2) All drugs described in IC 12-15-35.5-3(b) must be included on the preferred drug list.

(3) The office may add a ~~new single source~~ drug that has been approved by the federal Food and Drug Administration to the preferred drug list without prior approval from the board.

(4) The board may add a ~~new single source~~ drug that has been approved by the federal Food and Drug Administration to the preferred drug list.

(h) At least two (2) times each year, the board shall provide a report to the select joint commission on Medicaid oversight established by IC 2-5-26-3. The report must contain the following information:

(1) The cost of administering the preferred drug list.

(2) Any increase in Medicaid physician, laboratory, or hospital costs or in other state funded programs as a result of the preferred drug list.

(3) The impact of the preferred drug list on the ability of a Medicaid recipient to obtain prescription drugs.

(4) The number of times prior authorization was requested, and the number of times prior authorization was:

(A) approved; and

(B) disapproved.

(i) The board shall provide the first report required under subsection (h) not later than six (6) months after the board submits an initial preferred drug list to the office.

SECTION 8. IC 12-15-35-28.7, AS ADDED BY P.L.107-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28.7. (a) The board shall submit the initial approved preferred drug list to the office not later than August 1, 2002.

(b) Except as permitted under subsection (g), the office may not further restrict the status of a drug in the Medicaid program or the children's health insurance program until the board reviews a therapeutic classification and the office implements the therapeutic classification on the preferred drug list.

(c) The office shall provide advance notice to providers of the contents of the preferred drug list submitted by the board under subsection (a).

(d) Notwithstanding IC 12-15-13-6, the office shall implement any change in the preferred drug list not later than thirty (30) days after the date the board submits the amended list to the office.

(e) **Except as provided by section 28(g)(3) of this chapter,** the office may not implement a preferred drug list or an amendment to the preferred drug list that has not been approved by the board.

(f) The office may not require prior authorization for a drug that is excluded from the preferred drug list unless the board has made the determinations required under section 35 of this chapter.

(g) The office may adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 9. IC 12-15-35-43.5, AS ADDED BY P.L.107-2002, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43.5. **(a)** The board, the therapeutics committee, or the office may not release proprietary or confidential information obtained as part of the development, implementation, or maintenance of a preferred drug list under this chapter.

(b) Information described in subsection (a) is confidential for purposes of IC 5-14-3-4(a)(1).

SECTION 10. IC 12-15-35.5-2.5, AS ADDED BY P.L.107-2002, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. As used in this chapter, "unrestricted access" means the ability of a recipient to obtain a prescribed drug without being subject to limits or preferences imposed by the office or the board for the purpose of cost savings except as provided under ~~IC 12-15-35-8 and~~ section 7 of this chapter.

SECTION 11. IC 12-15-35.5-7, AS ADDED BY P.L.6-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to subsection (b), the office may place limits on quantities dispensed or the frequency of refills for any covered drug for the purpose of:

(1) preventing fraud, abuse, waste, overutilization, or inappropriate utilization; or

(2) implementing a disease management program.

(b) Before implementing a limit described in subsection (a), the office shall:

(1) consider quality of care and the best interests of Medicaid recipients;

(2) seek the advice of the drug utilization review board, established by IC 12-15-35-19, at a public meeting of the board; and

(3) publish a provider bulletin that complies with the requirements of IC 12-15-13-6.

(c) Subject to subsection (d), the board may establish and the office may implement a restriction on a drug described in section 3(b) of this chapter if:

(1) the board determines that data provided by the office indicates that a situation described in IC 12-15-35-28(a)(8)(A) through IC 12-15-35-28(a)(8)(K) requires an intervention to:

(A) prevent fraud, abuse, waste, overutilization, or inappropriate utilization; or

(B) implement a disease management program;

(2) the board approves and the office implements an educational intervention program for providers to address the situation; and

(3) at least six (6) months after the implementation of the educational intervention program described in subdivision (2), the board determines that the situation requires further action.

(d) A restriction established under subsection (c) for any drug described in section 3(b) of this chapter:

(1) must comply with the procedures described in IC 12-15-35-35;

(2) may include requiring a recipient to be assigned to one (1) practitioner and one (1) pharmacy provider for purposes of receiving mental health medications;

(3) may not lessen the quality of care; and

(4) must be in the best interest of Medicaid recipients.

(e) Implementation of a restriction established under subsection (c) must provide that only the prescribing practitioner may authorize an override of the restriction.

(f) Before implementing a restriction established under subsection (c), the office shall publish a provider bulletin that complies with the requirements of IC 12-15-13-6.

(g) Subsections (c) through (f):

(1) apply only to drugs described in section 3(b) of this chapter; and

(2) do not apply to a restriction on a drug described in section 3(b) of this chapter that was approved by the board and implemented by the office before April 1, 2003.

SECTION 12. IC 12-21-2-5, AS AMENDED BY HEA 1395-2003, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) Subject to subsection (b), the director may delegate statutory duties or powers of the division, a bureau of the division, the director, or other statutorily created personnel.

(b) If the director decides that a final decision is to be made concerning the placement of a mentally ill individual in a mental health facility, the final decision must be made:

(1) by the director, if the director is a licensed psychiatrist or licensed psychologist; or

(2) by a licensed psychiatrist or licensed psychologist who is delegated the authority by the director;

in consultation with the patient's psychiatrist or psychologist.

(c) Subsection (b) does not apply to an initial placement designation made under IC 12-24-12-10(b).

SECTION 13. IC 25-22.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. (a) The board may authorize the service bureau to issue temporary fellowship permits for the practice of medicine. A temporary fellowship is subject to any termination date specified by the board.**

(b) The board may issue a temporary fellowship permit to a graduate of a school located outside the United States, its possessions, or Canada if the graduate:

(1) applies in the form and manner required by the board;

(2) pays a fee set by the board;

(3) has completed the academic requirements for the degree of doctor of medicine from a medical school approved by the board;

(4) has been issued a valid permit by another state for participation in a postgraduate medical education or training program located in a state that has standards for postgraduate medical education and training satisfactory to the board;

(5) has been accepted into a postgraduate medical fellowship training program that:

(A) is affiliated with a medical school located in a state that issued a permit under subdivision (4);

(B) has a training site located in Indiana; and

(C) has standards for postgraduate medical education and training satisfactory to the board;

(6) provides the board with documentation of the areas of medical practice for which the training is sought;

(7) provides the board with at least two (2) letters of reference documenting the individual's character; and

(8) demonstrates to the board that the individual is a physician of good character who is in good standing outside the United States, its possessions, or Canada where the person normally would practice.

(c) Applications for the temporary fellowship permit for graduates of foreign medical schools must be made to the board subject to this section.

(d) A permit issued under this section expires one (1) year after the date it is issued and, at the discretion of the board, may be renewed for additional one (1) year periods upon the payment of a renewal fee set by the board by rule.

(e) An individual who applies for a temporary fellowship permit under this section is not required to take any step of the United States Medical Licensure Examination.

(f) A temporary fellowship permit must be kept in the possession of the fellowship training institution and surrendered by it to the board within thirty (30) days after the person ceases training in Indiana.

(g) A temporary fellowship permit authorizes a person to practice in the training institution only and, in the course of training, to practice only those medical acts approved by the board but does not authorize the person to practice medicine otherwise.

(h) The board may deny an application for a temporary fellowship permit if the training program that has accepted the applicant has:

(1) violated; or

(2) authorized or permitted a physician to violate;

this section.

(i) A person issued a temporary medical permit under this section must file an affidavit that:

(1) is signed by a physician licensed in Indiana;

(2) includes the license number of the signing physician;

(3) attests that the physician will monitor the work of the physician holding the temporary medical permit; and

(4) is notarized.

The affidavit must be filed with the service bureau before the person holding the temporary medical permit may provide medical services.

(j) This section expires July 1, 2008.

SECTION 14. P.L.107-2002, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 36. (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning.

(b) The office shall develop a federal Medicaid waiver application under which a prescription drug program may be established or implemented to provide access to prescription drugs for low-income senior citizens.

(c) Before the office may submit an application for a federal Medicaid waiver that will have an effect on the Indiana prescription drug program established under IC 12-10-16, the following must occur:

(1) The office shall submit the proposed Medicaid waiver to the prescription drug advisory committee established under this act.

(2) The prescription drug advisory committee must review, allow public comment, and approve the proposed Medicaid waiver.

(d) A prescription drug program established or implemented by the office or a contractor of the office under this SECTION may ~~only~~ **not** limit access to prescription drugs for prescription drug program recipients, **except under the following circumstances:**

(1) Access may be limited to the extent that restrictions ~~are~~ **were** in place in the Medicaid program on ~~the date of enactment of this act.~~ **March 26, 2002.**

(2) Except as provided by IC 12-15-35.5-3(b) and IC 12-15-35.5-3(c), access may be limited to:

(A) prevent the following:

(i) Fraud.

(ii) Abuse.

(iii) Waste.

(iv) Overutilization of prescription drugs.

(v) Inappropriate utilization of prescription drugs; or

(B) implement a disease management program.

IC 12-15-35.5-7 applies to a limit implemented under this subdivision.

(e) Changes to a prescription drug program that:

(1) is established or implemented by the office or a contractor of the office under this SECTION; and

(2) uses money from the Indiana prescription drug account established under IC 4-12-8-2;

must be approved by the prescription drug advisory committee established under this act.

(f) Before July 1, 2002, the office shall apply to the United States Department of Health and Human Services for approval of any waiver necessary under the federal Medicaid program to provide access to

prescription drugs for low income senior citizens.

(g) A Medicaid waiver developed under this SECTION must limit a prescription drug program's state expenditures to funding appropriated to the Indiana prescription drug account established under IC 4-12-8-2 from the Indiana tobacco master settlement agreement fund.

(h) The office may not implement a waiver under this SECTION until the office files an affidavit with the governor attesting that the federal waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(i) If the office receives a waiver under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection ~~(f),~~ **(h),** the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit.

SECTION 15. **An emergency is declared for this act**.

(Reference is to EHB as printed April 4, 2003.)

Conference Committee Report
on
Engrossed House Bill 1458

Signed by:

Representative Brown C Chairperson	Senator Miller
Representative Becker	Senator Breaux
House Conferees	**Senate Conferees**